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Globalization and interdependence

Impact of international commitments, policies and processes on the scope and the implementation of national development strategies

Report of the Secretary-General

Summary

There is a vast array of international commitments, policies and processes that impact upon national policies. In an increasingly integrated and interdependent world, balancing international obligations with national priorities has become a challenge. In its resolution 61/207, the General Assembly requested that the Secretary-General report to it at its sixty-second session on the theme "Impact that, inter alia, international commitments, policies and processes can have on the scope and the implementation of national development strategies" under the item entitled "Globalization and interdependence".

Pursuant to that resolution, the report highlights key areas where international disciplines, rules, policies and processes have an impact on the design and implementation of national development strategies. It concludes that to facilitate adequate responses, policies need to be flexible and tailored to changing domestic and external circumstances. The report also makes recommendations for actions at the national and international levels, and highlights the role of the United Nations.

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I. Introduction

1. Managing globalization for the benefit of all remains a major concern. Economic liberalization has unleashed global market forces that have a significant impact on the degree of flexibility countries have in shaping national policies. At the same time international obligations bind countries to certain international disciplines and processes. Those obligations are wide-ranging, covering economic, social and environmental areas, and they are often complex. Many countries do not have a complete understanding of these obligations. They often do not have a voice in shaping them and have increasing difficulty in implementing them.

2. Countries face many challenges as they endeavour to balance their international obligations with their national priorities, particularly in an environment where they are all intricately linked. Developing countries, especially the least developed and most vulnerable, feel increasingly constrained. Their ability to have bold and goal-oriented national development strategies is impeded by some of the demands of international policies, commitments, processes and rules. While all countries face such constraints, developing countries have greater difficulty in managing the negative implications.

3. To address the preceding issue, the General Assembly, in its resolution 61/207, requested the Secretary-General to submit a report at its sixty-second session on the theme "Impact that, inter alia, international commitments, policies and processes can have on the scope and the implementation of national development strategies" under the item entitled "Globalization and interdependence".

4. There are numerous international commitments, policies and processes that have an impact upon domestic policies in countries. Section II identifies key areas where international disciplines and rules, policies and processes impinge upon national development strategies. They include obligations in the areas of finance and investment, trade and the environment. While the list is not exhaustive, it highlights the main policy concerns of countries. The areas are interrelated and the policies formulated need to be tailored to changing domestic and external circumstances. Section III highlights the impacts those policies and processes have on the ability of countries to design and implement national development strategies and how national Governments could pursue country-specific development-oriented policies. Those concerns were also the subject of the eleventh session of the United Nations Conference on Trade and Development (UNCTAD), which stressed the need for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. Section IV highlights the role of the United Nations in helping countries to implement their unique national development strategies. Section V includes conclusions and suggested recommendations.

II. International commitments, policies and processes

5. International commitments are often binding and rule-based, and require compliance. In some instances, countries voluntarily choose to become parties to such commitments. Even if countries choose not to do so, they may still be affected by the consequences of such international commitments and disciplines. International discretionary policies are often shaped by market forces, both external

and domestic, and also by the binding international commitments to which countries have pledged themselves. International processes can loosely be considered as the market forces brought about by the main drivers of globalization: cross-border trade and financial flows. In the environmental sphere, international processes may involve activities shaped by international commitments. In addition, all the above are interlinked, and changes in one have significant consequences for others.

6. International disciplines, commitments, policies and market considerations play a significant role in three key areas: investment and financial flows, trade and the environment. Globalization, driven largely by economic liberalization, has meant that the economic performance of a country is increasingly determined by factors outside its geographical borders. Domestic economic policies that are related to investment, financial flows, trade and the environment need to heed international disciplines and commitments as well as global market considerations. In an increasingly open economic system, global market forces, along with international obligations and regimes, have a significant impact on domestic monetary and fiscal policies.

7. Financial liberalization was expected to open up the barriers between countries and generate flows of funds from the capital-rich countries to the capital-poor countries. For most developing countries, external financing has become important, especially as a complement to domestic resources to finance development. Long-term, sustained flows of private capital such as foreign direct investment (FDI) and the associated technology transfers have become particularly crucial. Unfortunately, FDI is very unevenly distributed among developing countries, with low-income countries being a relatively marginal destination for such investments. A complex set of factors determine the volume and direction of FDI, and countries have to incorporate the appropriate policy mix into their national development strategies to attract FDI.

8. There has been a proliferation of bilateral, regional and international investment agreements, which have led to mixed results. External global market forces will to a large extent dictate the flows of foreign direct investment and other types of financial capital. However, there needs to be an enabling international environment for disadvantaged developing countries to build their productive capacities. Creating such an environment requires a collective and coherent effort. In the area of investment policymaking, the international community needs to assist developing countries as effectively as possible in discussions on agreements pertaining to investments.

9. Despite the emergence of international private capital flows as a key source of external finance for developing countries, not all developing countries have access to international capital markets. For many countries in Africa, the least developed countries, small island developing States and landlocked developing countries, official development assistance (ODA) remains the single largest source of external finance. Significant aid increases have been promised by some member countries of the Organization for Economic Cooperation and Development (OECD), but those amounts are far below the target amounts. However, increasing the volume of ODA is not sufficient in itself. Judicious national policies for ODA utilization need to ensure a limitation of negative macroeconomic impacts and the incorporation of long-term development concerns, including removing infrastructure bottlenecks and getting the balance right between short-term and longer term concerns.

10. The international community needs to ensure that ODA flows are sustained, predictable and provided in a timely manner to ensure their effectiveness. Achieving development goals necessitates medium-term expenditure planning, hence, medium-term commitments to financing, including more stable and predictable aid. Development aid continues to be beset by conditionalities, and the promise of greater direct budgetary support is far from realization. Moreover, the unpredictability of aid compromises the ability of Governments to plan future public expenditure. The absence of greater certainty undermines the credibility of recipients' medium-term planning, which is essential for developing meaningful poverty reduction and development strategies.

11. During the 1990s, there was a build-up of unsustainable external debt in many developing countries, and those debt problems continue to be a serious obstacle to economic and social development. Unconditional debt relief is necessary for higher social spending as well as for public and private investment. However, to avoid a recurrence of debt problems, additional ODA is necessary. That need has been recognized by the major ODA donors, which have committed to stepping up aid flows to support developing countries in their efforts to reach the internationally agreed development goals, including the Millennium Development Goals. However, even in the most optimistic scenario, many developing countries will continue to lack the necessary financial resources to achieve the internationally agreed development goals.

12. The Enhanced Heavily Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI), introduced in 2005, has helped in easing the external debt burdens of some countries. Recent debt cancellations for least developed countries are significant as they can release resources for their development priorities. Debt relief could imply fewer balance of payments problems for the least developed countries, potentially leading to a decreased need for and dependence on external resources, opening possibilities for fiscal policy alternatives, such as expansionary public budgets and progressive taxation policies. However, while implementation of the Multilateral Debt Relief Initiative is expected to substantially lower the debt-service ratios of the heavily indebted poor countries that have reached the completion point in the medium term, those ratios are projected to rise in the long run, due in part to new borrowing. Many developing countries, especially middle-income developing countries that have not had access to debt cancellation initiatives, continue to have unsustainable debt burdens. Certainly, most heavily indebted poor countries will need additional financing in the form of grants, rather than loans, in order to achieve further progress in poverty reduction and the eradication of hunger without experiencing new debt-servicing difficulties. Therefore, at the international level, a further strengthening of the global partnership for development remains imperative. This also calls for an increase in the voice and participation of developing countries in international organizations such as the international financial institutions.

13. Trade policy can be used judiciously to enhance growth and accomplish a country's development objectives. All countries are, to some extent, dependent on trade in goods and services to secure long-term prosperity, and hence are governed by a common system of rules pertaining to global trade. However, the benefits of trade have accrued to only a few. Before trade policy can evolve into a truly effective policy instrument, developing countries need to address the challenges they face in participating in the new international trading system.

14. Many developing countries remain dependent on the exports of three or fewer commodities for more than half of their export earnings. Those countries are particularly vulnerable to the vicissitudes of commodity prices. Particularly in economies that are not diversified, such as those of the least developed countries and of some African countries, that vulnerability has often contributed to increased poverty and indebtedness. Furthermore, countries often face difficulties in meeting the standards and requirements in developed countries' markets (for example, sanitary and phytosanitary standards), restricting further exports. Nevertheless, the dynamic sectors in world trade represent new and emerging trading prospects for developing countries, and enhancing their participation in such sectors is important to realizing development gains from international trade and trade negotiations. New opportunities are also provided by high-value-added, special and niche product and service sectors in which developing countries have potential comparative advantages. Only a few advanced developing countries have been able to take advantage of the opportunities that have arisen as a result of global market forces.

15. Agriculture is a central element in the current round of multilateral trade negotiations. There is a recognition of the concern of developing countries that liberalization could jeopardize their broader development goals and also their food security. There is broad agreement that the rules of the international trading system should recognize the development priorities of developing countries. Three measures in particular, that is special and differential treatment, special products and special safeguard mechanisms, which would give the developing countries some flexibility for protection against damaging imports, are part of the negotiations. Trade negotiations in those areas should strive to achieve food security, especially for the poorest, including poor farmers. Trade can also provide opportunities for the poor, if their products are able to penetrate lucrative export markets. Success in policies to raise poor farmers' incomes at the national level will be linked to the direction taken in the ongoing process of reform of the international trade regime governing agricultural trade. Developing countries are actively participating in the current World Trade Organization negotiations with the objective of designing an international regime more aligned with development objectives.

16. Other areas of the international trade regime which can affect the interests of small farmers include sanitary and phytosanitary regulations, liberalization of distribution services and intellectual property rights. Some action will require multilateral agreements, and thus must be pursued in concert with other interested countries, such as flexibilities to protect poor farmers (special products and special safeguard mechanisms), the maintenance or loosening of plant variety protection, more effective rules to prevent bio-piracy, more flexibility to raise bound tariff rates and resistance to excessive liberalization through formulas in tariffs and services. Others will involve defence of policy measures in direct negotiations with trade partners in response to requests for liberalization commitments on tariffs and services.

17. Another salient factor is the importance of trade policy for industrialization and therefore for trade in non-agricultural goods. Owing to the structural reforms of the past two decades, some developing countries have witnessed a loss in their manufacturing capacities. Industrial policy requires a coordinated approach to most of the spectrum of trade policies subject to international disciplines that are currently the subject of trade negotiations. The policies include tariff policy, subsidies, policies to develop an efficient services infrastructure and producer

service sector (for example telecommunications, financial services, transportation services, other producer services and policies with respect to movement of persons), investment policy and intellectual property rights. The execution of a coherent industrial policy therefore calls for a coordinated negotiating strategy covering all aspects of trade negotiations. The effectiveness of tariffs as a tool for industrialization is also linked to the monetary policy framework within which those tariffs operate. When the capital account is liberalized, control over exchange rates may be lost, and the appreciation of exchange rates can undermine export competitiveness and the impact of tariff protection.

18. The need for tariff protection changes as countries move up from more labour-intensive manufactures to more capital-intensive ones. At the first stage, tariffs are required to develop domestic labour-intensive consumer goods industries. At a subsequent stage, it is the relatively more advanced technology production that requires tariff protection to encourage investors to enter into technologically more complex activities. At the latter stage, the protection for the lower stage industries can be phased out. Such an approach can help attain the internationally agreed development goals by ensuring that new, higher-value-added, more advanced industries are established to provide better quality employment opportunities for those in the more labour-intensive industries before the latter are exposed to international competition. Taking such measures should also provide more decent and productive work for youth in the higher technology industries by stimulating "virtuous spiral" growth, thus reducing poverty and promoting overall human development. Moreover, with the general elimination of quantitative restrictions, tariffs also remain the main measure available for the protection of domestic industries. As a major source of revenue for the Governments of many developing countries, particularly least developed countries and small island developing States, tariffs are an essential tool for industrial policy for both reasons.

19. Since the early 1990s, many developing countries have increasingly complemented multilateral trade negotiations in the World Trade Organization with regional or bilateral agreements, including with developed countries and regions. Regional or bilateral agreements with large developed countries offer substantial benefits to members from developing countries as they usually provide greater market access than multilateral agreements and often include a wider range of products than such traditional trade preference schemes as the Generalized System of Preferences (GSP). Moreover, their adoption is generally expected to lead to additional FDI. On the other hand, greater integration often involves additional steps towards regulatory disciplines, and thus further constrains the ability of developing countries to adopt appropriate national regulatory and development policies.

20. Issues pertaining to finance, aid and trade have direct consequences for the environment and need to be taken into full consideration when designing national development strategies. The international law regime on environment and sustainable development has had an impact on both the formulation of policies and the generation of regulatory and institutional systems in terms of enforcement at the national and subnational levels. Despite numerous and varied environmental agreements that deal with the protection and conservation of natural resources and the environment, environmental degradation remains a major concern. Therefore, issues pertaining to protection of the environment need to be an integral part of any national development strategy, especially since it is the poor who are most dependent on the natural environment to meet their daily food, health, livelihood

and shelter needs. There is also a need to address the special needs of countries, such as the small island developing States, that are particularly vulnerable to natural disasters, the negative impacts of environmental degradation and climate change.

21. Countries face several challenges in their attempts to implement policies that are environmentally friendly. Economic liberalization has facilitated the transfer of technologies and ideas that lead to efficient utilization of natural resources, cleaner production technologies and eco-efficient management strategies. Nevertheless, rapid industrialization and integration into the global economy have contributed to environmental degradation, especially where domestic environmental regulation is inadequate. Even using modern technologies, large-scale production for global markets can generate large amounts of pollution and waste. For example, in sectors that involve extractive operations, excessive mining and drilling have caused severe environmental damage. Lightly regulated industrial activities have also created serious problems of air and water pollution. Unsustainable harvesting of renewable resources, for example from fisheries and forests, can also be exacerbated by production for export markets. The degradation of international watersheds, declining fish stocks, acid rain and regional air pollution are transboundary environmental challenges that require cooperation between countries in order to be addressed effectively. Where political boundaries do not coincide with shared ecosystems, the promotion of regional institutions for the management of transboundary ecosystems offers vast mutual economic and environmental benefits.

22. Countries thus have to bear in mind the impact on national policies of external global factors resulting from financial liberalization, trade liberalization and environmental considerations. Multilateral policies in those areas will have an impact upon the ability of countries to choose the best mix of domestic policies for sustainable and equitable development.

III. Impact of international commitments, policies and processes on the scope and implementation of national development strategies

23. The flexibility required to strike an appropriate balance between national priorities and international obligations has been affected by rapid globalization, economic liberalization and the associated market forces. Countries need to address the challenges carefully, after comprehensively assessing the full impact of international commitments, policies and processes on their national priorities. More importantly, they need to be able to strike an appropriate balance between economic, social and environmental concerns.

24. Foreign capital flows, including aid flows, can be beneficial to the economy when used and managed wisely. Alternatively, they can bring forth new challenges to macroeconomic policy. Such inflows, like other forms of capital inflow, put upward pressure on exchange rates, which can then shift domestic incentives away from tradable items to non-tradables, if domestic relative prices move in response. Foreign flows can also cause higher inflation when the capital is spent not on imports but on government outlays for non-tradables or domestic activities in which supply constraints are preventing output from expanding to meet the enhanced demand. Moreover, developing countries fear the adverse effects of currency appreciation and highly prioritize the need to keep higher levels of foreign exchange

reserves to guard against potential financial crises. As a result, aid inflows are not generally utilized effectively. Instead, there is a common tendency to combine such inflows of foreign exchange with deflationary domestic policies to ensure rising levels of foreign exchange reserves, both to insure against future instability and to prevent upward movements of the currency. Such measures could damage external competitiveness and reduce the viability of domestic enterprises. However, if recipient Governments can avoid this trap and use ODA for productive public investment that contributes to current and future growth, its macroeconomic effects will be positive.

25. In fact, one major challenge for developing countries in an integrating global economy is that of minimizing fluctuations in real output. It is becoming increasingly difficult to use counter-cyclical macroeconomic policy to achieve that key objective. Firstly, it is extremely difficult to manage volatile short-term flows of foreign capital. They drive boom-bust cycles in the domestic economy that have particularly detrimental effects on the stability of the economy. Secondly, the use of counter-cyclical monetary and fiscal policy is heavily constrained in such a context. In the face of an outflow of funds, interest rates have to be raised to stem this and to defend the exchange rate, hence having a pro-cyclical effect on the real domestic economy. Conversely, it is difficult to raise interest rates during a boom caused by a surge of capital inflows, as it will attract further inflows. The use of counter-cyclical fiscal policy during a downturn is also heavily constrained by the indiscriminate disapproval of fiscal deficits by both financial markets and international financial institutions.

26. Consideration should therefore be given to the use of a full range of regulatory tools such as rules governing capital requirements, and other measures affecting conditions in credit and asset markets in order to limit the cyclicality of the financial system. Those inherent systemic problems are compounded by the prevailing orthodoxy in macroeconomic policy, which places the highest priority on maintaining price stability and sound public finances. The current implicit assumption is that achieving macroeconomic stability in the narrow sense of price stability and fiscal balance is the best available means of attaining the broader objectives of achieving higher and more stable levels of growth in real output and employment which are, at best, secondary objectives.

27. The preceding view often pre-empts the serious consideration of alternative approaches. For example, a rigid view on the limits to fiscal deficits rules out consideration of the argument that in a situation of excess capacity it would make sense to run a fiscal deficit to boost aggregate demand and employment. Similarly, in the face of low investment, the only way to kick-start growth would be to raise public investment through running a fiscal deficit. Such a strategy could be justified if the investments were growth enhancing through objectives such as the crowding-in of private investment or the expansion of the productive capacity of the economy. Thus, the current policy orthodoxy indiscriminately rules out the possibility of a more pro-active role of the State in stimulating a process of private sector-led capital accumulation and growth. The above problems deriving from the global impact of the policies of industrialized countries create an unstable environment for developing countries seeking to attain higher growth.

28. The situation has become more difficult with the increasing integration of financial markets. As more and more developing countries undertake financial

liberalization, including of their capital accounts, they become increasingly exposed to exchange rate instability. This raises the risk premium faced by investors and therefore reduces the inducement to invest. At the same time, the cost of borrowing often increases since the domestic interest rate has to be increased to maintain the exchange rate and the confidence of financial markets. The supply of savings is also volatile owing to the significant presence of short-term flows in total foreign capital inflows. The short-term flows also often fuel asset bubbles in stock and real estate markets and other unproductive investments. In addition, liberalized capital accounts have created pressures to hold large international reserves that have a high opportunity cost in terms of foregone domestic investments that could have yielded higher rates of return.

29. In the area of trade, a major challenge that many developing countries face is that they have not been able to benefit fully from the various trade agreements that they have become a part of. World Trade Organization agreements, especially in the area of agriculture, have affected the ability of many countries to pursue policies in line with their national objectives in different ways and to different degrees. For example, the removal of agricultural subsidies of exports of agricultural products leads to an increase in agricultural product prices in export markets, which will benefit net agricultural exporting countries. However, for net food importing countries, their food bill will increase, and hence their food security is affected. For others, especially developed countries that are generally more substantive users of support and protectionist instruments, the threat that their systems of support may not be compatible with World Trade Organization agreements is real.

30. The payment of subsidies, as with other forms of protection, stimulates production to exceed its non-subsidized level, as subsidies increase the returns to production of any commodity. This higher level of production results, generally, in either increased exports to, or reduced imports from, world markets; either way, prices on international markets decline. Subsidies maintain production at otherwise unprofitable levels in the subsidizing countries, reducing the opportunities for other countries to export to subsidizing country markets and displacing their exports to third countries. Agricultural subsidies are highest in industrialized countries, and their impact is felt particularly by farmers in developing countries.

31. Another challenge is that developing countries often lack a voice and participation in the international organizations where they can actively defend their concerns during negotiations. The international trading system at present lacks such participatory processes. Developing countries lack the resources that would enable them to negotiate effectively. Moreover, in order to have greater market access, developing countries are entering into many bilateral, regional and multilateral agreements, despite the lack of information on the full impact of those agreements on their economies. Many of the agreements are with developed countries, but some South-South trade agreements have also been reached. With the exception of a few countries, the preference schemes have not contributed significantly to generating real export growth of the beneficiaries or to improving their trade shares. While that outcome has been partly a result of the various restrictions in the schemes (for example in respect of product coverage, quotas and rules of origin), supply-side constraints and the fact that the preferences are unilateral and not legally binding in the World Trade Organization appear to have played a significant role.

32. Consequently, enhancing developing countries' participation in and benefits from new and dynamic growth opportunities in world trade is important in realizing development gains from international trade and trade negotiations. Coherence and consistency among trade and other economic policies being pursued at the national, bilateral, regional and multilateral levels by all countries are important for maximizing the contribution of such policies to development.

33. National development strategies have to be formulated with a view to minimizing the negative social impact of globalization and maximizing its positive effects. Well-designed and effectively implemented social policies that provide education, empower women, foster good health, create decent and productive employment and provide basic infrastructure for clean water, sanitation and transportation are critical for the sustained economic growth and development of any country. All of those policies will help in avoiding the marginalization of various groups in countries. Sustained efforts towards promoting the right mix of social policies have long-term benefits as they focus mainly on human development. Nevertheless, developing countries face many challenges when designing social policies.

34. National Governments are struggling with meagre resources to allocate to such competing social priorities as education, health, water and sanitation, and they continue facing the challenges of improving efficiency in the use of resources. One reason for this is the fact that social policies are the primary function of the State, and it is mostly public expenditure that finances the provision of basic services in any country. The use of fiscal incentives, especially with a view to supporting and developing a robust private sector, together with the new push towards a reduced role for the State, is widely believed to have reduced the fiscal capacity of Governments. In many cases, this reduction in the fiscal capacity of Governments has led to a reduction in government expenditures vital for poverty reduction.

35. Increasing international competition for markets, technology and FDI has generated pressures to increase labour market flexibility and erode labour protection. In addition, Governments are more inclined, or often compelled, to divert much-needed public funding, from social sectors such as health, education and basic services to infrastructure that supports the production of capital and technology intensive goods. Simultaneously, countries are expected to provide a predictable commercial and social environment for the enforcement of property rights, contractual obligations and consumer protection. The presence of effective and well-functioning regulatory regimes in critical economic and social sectors encourages investment, cuts down economic transaction costs for investors and protects the poor from fraud and substandard goods and services. Access to timely justice through affordable legal services allows for the quick settlement of disputes, unwarranted litigation or prosecution and of other legal abuses that are often experienced by poor and disenfranchised populations. Such access entails costs and specific budget allocation by recipient countries.

36. Furthermore, economic liberalization has resulted in global market forces that have changed relative prices, consumption possibilities and patterns, which in turn have affected peoples' jobs, livelihoods and incomes. Invariably some have been adversely affected while others have gained from this often intense process of change. In many countries some groups of workers have been adversely affected by trade liberalization and the relocation of production to lower-wage economies owing

to cost-cutting needs. While this has so far primarily affected unskilled workers, some skilled and professional workers have also been affected by developments, such as the increasing trade in professional services and increased immigration of skilled professionals from developing countries. While the exact impact of relocation of production to low-wage economies is complex, this has led to job losses even in industrial countries.

37. Those workers that have benefited most from such external influences include those associated with successful multinational enterprises and with internationally competitive national enterprises. More generally, those endowed with capital and other assets, entrepreneurial ability, education and skills that are in increasing demand have all benefited. Conversely, the adversely affected include those associated with uncompetitive enterprises that have been unable to survive in the face of trade liberalization or the entry of foreign firms. These enterprises include those previously protected by trade barriers, subsidized State enterprises, and small and medium-sized enterprises that had a limited capacity to adjust to a rapid liberalization of the economy. Impoverished producers of importables, whether in the urban informal economy or in agriculture, have been particularly vulnerable to the influx of cheap imports and sharp changes in the relative prices and availability of inputs. Such producers (especially the small and medium-sized enterprises) are also unable to seize the new economic opportunities that have been generated since they lack capital and access to credit, information and extension services. Those who have lost out, except in countries that have experienced rapid growth, have been the poor, those without assets, the illiterate, the unskilled workers and indigenous peoples. This has occurred not only as a result of the primary economic impact of globalization but also as a result of its indirect effects. Similarly, the increased mobility of capital combined with high levels of unemployment has weakened the bargaining position of workers vis-à-vis employers.

38. Therefore, the role of Governments and the public sector needs to be enhanced. Governments need to promote policies that generate decent employment, increase tax revenues for social spending and income redistribution, thereby reducing inequalities. Social transfers become particularly attractive from the point of view of direct and quick impacts on low-income households. It is likely that for some countries an expanded government role might result in lower growth rates in the short run, but it is likely to have beneficial positive impacts in the long run.

39. External financing of social policies is an option, provided debt does not jeopardize macroeconomic stability. At the regional level, cooperation on the regulation of public and private delivery of social services (water, electricity) can be helpful. For example, regional formations in principle are in a stronger position than isolated Governments to negotiate with private providers to ensure access, affordability and quality standards in commercial services and utilities. Disaster management and early warning systems definitely need a regional or global perspective. At the global level, cooperation to promote local investment and allow more progressive tax systems (for example through coordinated measures to control capital flight, tax havens and tax competition) and risk-pooling mechanisms, such as international agricultural insurance are other examples that can benefit from regional or global cooperation.

40. Increased aid, for example, could support equitable national development strategies in which social policies go hand in hand with economic development

under good governance. In that way, developed and developing countries would better share responsibility for achieving global prosperity and the internationally agreed development goals. The instruments of aid have been progressively evolving from projects to transfers from developed to developing countries, in the form of general budget support to a Government or sector-wide approaches, budget support to a specific sector like health, supporting Governments with good governance, multi-annual budgets, medium-term expenditure frameworks and minimized fiduciary risks.

41. Many social issues go beyond national boundaries, and Governments may want to consider coordinating global and regional social policies such as health. Regional and global initiatives and agreements can play a critical role in addressing such social issues. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has an impact on health, especially in regard to providing cheaper medicines for developing countries. Regional cross-border investments to address common priorities in social policy could be initiated. For example, investments for the production of generic pharmaceuticals at the regional level could be beneficial.

42. International commitments, policies and processes have significant consequences for the prospects of achieving sustainable development goals. For instance, climate change is a serious concern that requires a global response, including reductions of emissions of greenhouse gases. Mitigation of greenhouse gases and adaptation to the impacts of climate change pose challenges for both developed and developing countries. With income levels far below those of developed countries and per capita emissions on average just one sixth those of the industrialized world, developing countries strive for economic growth and a better quality of life and, in the context of addressing climate change, often stress the relevance of the principle of common but differentiated responsibilities. Clean technologies and energy efficiency measures can contribute to both mitigating greenhouse gases and economic growth in both developing and developed countries. However, clean technology options are often expensive, and innovative mechanisms for financing and transferring cleaner technologies to developing countries and ensuring adequate investment in research and development of new technologies are needed to achieve sustainable development goals.

43. The two-year review of climate change undertaken by the Commission on Sustainable Development at its fourteenth and fifteenth sessions pointed to the need for adaptation and mitigation measures in both developed and developing countries. To that end, countries need to cooperate to mobilize investment and transfers of appropriate technologies; promote continuing market reforms; promote policies to avoid price distortions; build capacity; and ensure the dissemination of appropriate information. Developing countries' efforts in this regard should be actively supported through such mechanisms as the Global Environment Facility. In addition, market-based approaches such as the clean development mechanism could help generate investment in cleaner energy.

44. Efforts should be made wherever possible to realize synergies between greenhouse gas mitigation, local environmental objectives, such as improving air quality and encouraging forest and land conservation, and overall sustainable development goals. Measures that improve the efficiency of energy generation and use in industry, for example, can reduce carbon dioxide and other harmful emissions simultaneously while contributing to economic and industrial development. In

addition, providing stronger incentives for sustainable forest management can lead to both local and global environmental benefits. Information should also be widely disseminated so that individuals can change their patterns of consumption, thus contributing to the reduction of greenhouse gas emissions.

45. Placing a higher priority on adaptation to the impacts of climate change both in developed and developing countries can contribute to achieving sustainable development goals. The latest report by the Intergovernmental Panel on Climate Change suggests that developing countries, especially low-income ones, are among the most vulnerable to the impacts of climate change, as they lack the means to cope with them. Countries can cooperate to provide technical and financial resources to assist those countries in improving resilience and in increasing their capacity for adaptation.

46. With globalization, the economies of developing countries have become ever more dependent on export markets, particularly those of the developed countries. As consumer preferences have evolved, including growing concerns for the safety of food and other products and for the environmental impacts of their production, new demands have been placed on producers. Environmental, health and food-safety requirements are becoming more stringent, frequent, complex and interrelated. Such obligations pose serious challenges, but also provide opportunities for export competitiveness as well as sustainable production and consumption methods at the national level. An example is the rapid expansion of organic agriculture markets, with global growth rates of over 12 per cent in the last few decades, much faster than overall agricultural market growth. Generally, there is heightened interest in environmentally preferable products, services and production methods since they are strategic markets of the future. Voluntary, private standards and labelling schemes fall outside World Trade Organization disciplines that seek to ensure transparency, non-discrimination and equivalence. In recent years, with high fossil fuel prices and stronger climate change policies, the biofuel market has also been growing very rapidly in some countries, and certain developing countries could reap substantial rewards from supplying that market. However, the environmental and food security implications of a rapid expansion of biofuel demand need to be better understood.

47. The consequences of globalization have meant that, in developing countries, global market forces have largely dictated policies that promote growth with minimal consideration for their social and environmental impacts. There is a need to redress the balance between economic and social policies. Sustained and long-term investments in the social sectors will reap benefits. The challenge is for Governments to choose long-terms benefits over short-term gains with full support from the international community.

IV. Role of the United Nations in designing effective national development strategies

48. The United Nations has a central role in promoting global policies that improve the development prospects of countries. Countries are increasingly turning to the United Nations for advice to address the challenges of globalization and other cross-border issues. The United Nations system also continues to play an essential role as a convener, setting norms and standards and advising countries on their

implementation at the global, regional, national and local levels, and has provided Member States with a forum to reach consensus on internationally agreed development goals. The United Nations needs to be a more active player in this context — as a facilitator to Governments, as a convener of stakeholders, as an advocate for international norms and standards and as a source of technical assistance and advice on how to build and strengthen institutions. The internationally agreed goals, arising from United Nations conferences and summits, provide countries with a comprehensive framework of development objectives on which to base their national strategies. The United Nations recognizes that such strategies should be nationally owned and driven by national priorities. The policy notes[1] developed by the United Nations could assist countries in designing and implementing their national development strategies.

49. In addition, Governments should have a clear idea of global norms and regulations that need to be taken into account while designing national policies based on their development priorities. While providing assistance in designing national development strategies, the United Nations needs to ensure that Governments have some flexibility in designing policies that can help them build a platform that allows them to pursue the internationally agreed development goals, including the Millennium Development Goals. Similar consideration should also be given in the Organization's operational work at the country level. Without the right foundation of institutions and policies, most developing countries, especially the least developed ones, will be unable to embark on a path that allows them to achieve their global commitments. More importantly, developing countries, particularly the poorest, need an adequate voice and participation in the global system where rules and norms are established. To that end, the United Nations can provide a unique forum at the global, regional and subregional levels where the implications of signing on to international obligations are discussed, especially for developing countries. Given the growing importance of regional and interregional initiatives, the United Nations should help countries to participate effectively in those initiatives while ensuring functional and coherent linkages with the multilateral system.

50. Today there are many other actors active in development, such as non-governmental organizations, foundations and the private sector, and the country presence of bilateral donors is growing. At the same time, countries face the challenge of adhering to a variety of international agreements and treaties while pursuing their development priorities. In this new development landscape, with many players providing multifaceted contributions to development, the United Nations needs to deploy its normative and policy capacity more effectively. The United Nations can help countries by designing policy implication packages that analyse the impact of international agreements on national development strategies. The packages will analyse the impact of all types of agreements — international, bilateral, regional and multilateral — on countries. They will provide a comprehensive assessment of the pros and cons of entering into such agreements as well as suggest areas where countries can negotiate further on certain issues. The policy implication packages will be complementary to the policy notes and will help countries to analyse the implications of international agreements for their economies and determine how to respond to the challenges.

[1] http://esa.un.org/techcoop/policyNotes.asp.

V. Conclusions

51. National planning capacity and the level of participation will influence the results of any of the processes outlined above. Implementing national development strategies will require significant commitments of resources: financial, human and intellectual. Relative scarcity affects stakeholder engagement in any part of the process owing to the seemingly high opportunity cost of their involvement. This includes the cost of acquiring comprehensive knowledge of international obligations. Equally important is the expertise required to participate effectively during negotiations of those international agreements. An in-depth knowledge of the impact of such agreements on the countries themselves is also vital. Development partners, including entities of the United Nations system, can help to manage the process. Moreover, development partners need to have a close knowledge of the country to assess the balance of risks and opportunities and advise the Government on how best to avoid the risks. The present report has highlighted some of the main areas where international processes, rules and regimes are likely to impinge on the policymaking process at the national level.

52. The following recommendations are presented to the General Assembly with the objective of facilitating the design of national strategies best suited to their needs, taking into consideration the varied international processes and norms:

National level

- **Many developing countries have increasingly complemented multilateral trade negotiations in the World Trade Organization with regional or bilateral agreements, including with developed countries. Developing countries need to understand the full implications of such agreements for their economies.**
- **Long-term institutional capacity development is important to equip and empower local research and training communities to reliably advise national policymakers and train future negotiators and analysts. In that regard, countries need assistance to enable them to increase their voice and participation in global governance and global rule setting.**
- **Developing countries need to ensure that official development assistance translates into higher public investment, preferably where there are shortages or bottlenecks to production, or where existing levels of provision are socially inadequate.**
- **In reducing fluctuations in real output, consideration should be given to the use of a full range of regulatory tools such as the rules governing capital requirements and to other measures affecting conditions in credit and asset markets.**
- **The public sector remains crucial for financing and investing in basic services in any country, as well as for integrating social policies along with economic and environmental ones to ensure good governance. Governments should be given full support where needed and encouraged to foster regional and global initiatives to address social issues as well.**

International level

- **Developed countries and/or donors need to align their overall support to developing and/or recipient countries' national development strategies, institutions and procedures. Donors also need to harmonize their actions by implementing common arrangements and simplifying procedures with a view to reducing duplication and enhancing the transparency of their actions.**

- **Issues pertaining to the impact of the new environmental, health and food-safety requirements on the access of developing country products to key export markets need to be addressed.**

- **New instruments of aid support should aim to support social development. For example, sector-wide approaches and general budget support could be used to finance social transfers.**

- **In the case of those heavily indebted poor countries that have received debt relief under the initiative but still need additional resources to finance investment for development, there is a need to promote responsible lending and borrowing and to link the grant element of such loans to the capacity to pay.**

Role of the United Nations

- **While providing assistance in designing national development strategies, the United Nations needs to ensure that Governments secure a certain degree of flexibility to design policies that can help them to achieve the internationally agreed development goals, including the Millennium Development Goals. Similar consideration should be given in the Organization's operational work as well.**

- **The United Nations can also provide a unique forum at the regional and subregional levels where the implications of signing on to international obligations, especially for developing countries, are discussed. Given the growing importance of regional and interregional initiatives, the United Nations should help countries to participate effectively in those initiatives while ensuring functional and coherent linkages with the multilateral system.**

- **The United Nations can help countries by designing policy implications packages that analyse the impact of international agreements on national development strategies and ways to respond to such challenges. Ideally, those strategies should recognize the distinct yet interrelated roles of various stakeholders such as the private sector and civil society in the national as well as the international contexts. Development stakeholders, including the United Nations, should help developing countries analyse the impact of such agreements to ensure a favourable outcome.**

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Item 72 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Secretary-General on the Khmer Rouge trials**

Summary

In its resolution 57/228 B of 13 May 2003, the General Assembly requested the Secretary-General to report to the Assembly at its fifty-eighth session on the implementation of that resolution. In his reports on the Khmer Rouge trials of 3 December 2003 (A/58/617), 12 October 2004 (A/59/432), 29 November 2004 (A/59/432/Add.1) and 25 November 2005 (A/60/565), the Secretary-General provided information on the progress achieved towards establishing the Extraordinary Chambers for the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea.

The present report provides details on the progress achieved by the Extraordinary Chambers since the above-mentioned reports.

* A/62/150.

** The submission of the present report was delayed to permit extensive consultations with various departments.

07-49088 (E) 140907

I. Introduction

1. Since the issuance of my reports on the Khmer Rouge trials of 12 October 2004 (A/59/432) and 25 November 2005 (A/60/565), the Extraordinary Chambers in the courts of Cambodia have achieved substantial progress in many areas. During the reporting period, the offices of the Co-Prosecutors and Co-Investigating Judges were opened, the Defence Support Section was established, investigative work commenced, the courts' internal rules were adopted and the co-prosecutors submitted their first introductory submission. However, the unique structure of the Extraordinary Chambers presents challenges in both the administrative and judicial aspects of the court. In addition, significant shortfalls in staffing and the budget have been identified and will need to be addressed quickly in order for the Extraordinary Chambers to meet their mandate.

II. Establishment of the Office of Administration

2. In paragraph 6 of my report of 25 November 2005 (A/60/565), it was noted that I had appointed the Deputy Director of the Office of Administration. Furthermore, in accordance with paragraph 3, article 8, of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, the Royal Government of Cambodia appointed the Director and Reserve Director of the Office of Administration by Royal Decree No. NS/RKT/1105/462 of 12 November 2005 and assigned the Deputy Director of the Office of Administration by Royal Degree No. NS/RKT/1105/466 of 12 November 2005.

3. A start-up assessment mission, led by the Deputy Director of the Office of Administration, visited Phnom Penh from 6 to 16 December 2005. Meetings were held between the mission and the task force, during which drafts were finalized of the two supplementary agreements on safety and security, and on utilities, facilities and services referred to in articles 14 and 17 (b), and (e) of the Agreement. The drafts were subsequently signed by the Secretary of State of the Ministry of the Interior of the Royal Government of Cambodia and the Director and the Deputy Director of the Office of Administration on 14 March 2006.

Challenges of the hybrid system

4. The Office of Administration is a hybrid system, with separate administrative rules and regulations. The Director of the Office reports to the Government of Cambodia, while the Deputy Director, as a United Nations staff member, reports to the Secretary-General. As I noted in my report of 25 November 2005 (A/60/565, para. 3), the budget of the Extraordinary Chambers is divided between the share of the United Nations of $43 million, to be financed through voluntary contributions from Member States, and that of $13.3 million borne by the Government of Cambodia, financed through both government resources and voluntary contributions. The Royal Government of Cambodia has also committed to provide in-kind contributions covering the cost of premises, security, detention facilities, outreach, utilities and medical support. The United Nations share of the budget is administered in conformity with the Financial Regulations and Rules of the United Nations. Similarly, international personnel are recruited under and are subject to the

United Nations Staff Rules and Regulations. With the exception of funds channelled through a trust fund project of the United Nations Development Programme, the Cambodian share of the budget and the personnel appointed by the Royal Government of Cambodia are subject to the applicable Cambodian laws.

5. The hybrid system has posed many challenges and difficulties in the implementation of an integrated administrative structure to support the judicial process, especially in those sections in which staff members who work under the daily supervision of international chiefs have reporting lines outside of their sections, and vice versa. In order to address such challenges and difficulties, the Secretariat appointed two experts who visited Phnom Penh from 14 May to 1 June 2007 in order to ascertain the state of preparedness of the administrative structures and to identify measures that the United Nations could take to ensure that adequate systems and facilities are put in place to enable the successful conduct of judicial proceedings.

6. In their assessment report, the experts identified a number of issues relating to the hybrid nature of the Office of Administration and highlighted the lack of capacity in certain areas of the Office of Administration, most notably in the Court Management Section. The experts also highlighted the inadequacy of the current budget and staff resources and recommended a comprehensive review, taking into account the revised judicial infrastructure and other new requirements arising from the adoption of the internal rules.

7. Among the most serious issues raised in the report was the inability to translate the thousands of pages of technical documents into three languages within the current capacity and the inability of the Court Management Section to process the case files that have just been put before the co-investigating judges. A concerted effort has been made to study and implement the recommendations made by the experts, in cooperation with the Director and Deputy Director of the Office of Administration, including the temporary assignment of external experts and international staff to provide the targeted technical assistance in the above areas.

Contacts with the diplomatic community

8. In order to engage in regular dialogue with Member States on issues related to the Extraordinary Chambers, the Director and Deputy Director of the Office of Administration liaise on a regular basis with the diplomatic community in Phnom Penh. Furthermore, at the suggestion of the Deputy Prime Minister of the Royal Government of Cambodia, donor countries and other interested States have created an informal group known as the Friends of the Extraordinary Chambers in the Courts of Cambodia, which meets with the Director and Deputy Director of the Office of Administration from time to time to discuss the ongoing process and to offer non-judicial advice and assistance. The first of such meetings was held in June 2006, and it was agreed that they would continue on a bimonthly basis, hosted alternately by the embassies of Japan and France. The meetings have proved to be a useful forum for informal consultations and information-sharing between the Extraordinary Chambers and the diplomatic community.

9. The Deputy Director of the Office of Administration, in her capacity as the Coordinator of the United Nations Assistance to the Khmer Rouge trials, has also been welcomed into the United Nations country team in Cambodia and attends its

monthly coordination meetings to ensure that the United Nations system provides a coordinated approach to the issue of the Khmer Rouge trials.

Contacts with the non-governmental organization community

10. As I noted in paragraph 12 of my report of 12 October 2004 (A/59/432), the establishment of the Extraordinary Chambers has generated considerable interest from non-governmental organizations (NGOs) and civil society groups. During the reporting period, court officials have made every effort to provide timely, accurate and complete information to interested organizations and seek out cooperative agreements of mutual benefit wherever possible. This policy has been successful in a number of areas. For example, the Documentation Centre of Cambodia has provided research material for the co-prosecutors and has brought over 5,000 rural Cambodians to visit the court facilities; the Cambodian Society for Democracy and the Open Forum of Cambodia have organized and promoted provincial public forums with the Extraordinary Chambers; the Open Society Justice Initiative coordinates a monthly NGO/Extraordinary Chambers information-sharing session; the Khmer Institute for Democracy has worked with the Extraordinary Chambers in the production of an educational film and print publications; and both the Cambodian Human Rights and Development Association and the Transcultural Psychosocial Organization Cambodia are working closely with the witness support office of the Extraordinary Chambers.

11. Despite the good cooperation received in many areas, suspicions of governmental interference in the judicial process and allegations of corruption have been raised by members of the NGO community, resulting in guarded support. To counter this view, every effort is being made to ensure that the work of the court is transparent and that court officials take part in open dialogue with the NGO community so that the latter consider themselves to be true partners in the success of the court.

Public outreach activities

12. As I noted in paragraph 22 of my report of 12 October 2004 (A/59/432), the concept of operations of the Extraordinary Chambers includes public information and outreach as an integral part of the court's work. During the reporting period, the Public Affairs Section of the Extraordinary Chambers has made extensive efforts to ensure that the Cambodian population is informed about the judicial process. The Public Affairs Section has taken part in public forums held in eight city centres in Cambodia, each targeting three provinces. Support from the judicial side of the court for those activities has been excellent, with at least one official from the court chambers or the Defence Support Section present to talk to the audience and answer questions from the public. The forums have been well received and well attended by both the general public and civil society groups. Additional personnel dedicated to outreach in the coming year will enable the Public Affairs Section to expand this programme and ensure that the rural population remains both aware of the court and supportive of its mandate.

13. During the reporting period, the Public Affairs Section developed a common theme and slogan for its outreach material. The phrase "Moving forward through justice" is now included on all outreach material and is becoming recognized across Cambodia. Over the past 12 months, the Public Affairs Section has produced and

distributed 100,000 copies of an information booklet entitled, "*An introduction to the Khmer Rouge trials*", as well as 25,000 posters and 30,000 bumper stickers to raise public awareness. The websites of the United Nations Assistance to the Khmer Rouge Trials and the Extraordinary Chambers were also set up in the first year and have shown a significant rise in hits each month. Finally, a series of short radio spots were completed and distributed to all Cambodian media stations. The radio spots are now being aired frequently in support of call-in shows and drama and news programmes that focus on the Khmer Rouge trials.

14. Interest in the work of the court is expected to grow exponentially as the process moves forward, placing even greater pressure on the work of the Public Affairs Section. Within the limits of its staff and budget, the Section continues to make every effort to supplement its work by supporting the efforts of the local media and civil society groups to educate the public about the work of the court. However, additional staff and funding are needed to increase the variety and quantity of official information products distributed so as to ensure that public and civil society information needs are met.

Security and safety

15. In accordance with the supplementary agreement concerning security and safety, the security responsibilities of the United Nations include the establishment and direction of security arrangements within the premises and arrangements for close protection, as necessary, for international personnel. In addition, the Organization's security responsibilities include ensuring compliance by all international personnel with the terms of the supplementary agreement and with the security policies and procedures established and issued by it. The Chief, Security and Safety was appointed in June 2007. The development and implementation of security arrangements within the premises has progressed to include the recruitment of security staff; security risk assessments of the premises of the Extraordinary Chambers and the identification of personnel under possible threat; access plans; and screening facilities. In addition, close protection arrangements for the international co-investigating judge and international co-prosecutor are fully operational.

16. Efforts to coordinate with the Ministry of the Interior have increased and have led to closer working relations and information-sharing, which in turn have resulted in a more robust security mechanism for international staff members. The Chief, Security and Safety also attends the monthly meeting of the United Nations country security management team as an observer and coordinates security matters with the designated official as they pertain to any security impact on the United Nations community within Cambodia resulting from the work of the Khmer Rouge trials.

III. Appointment of the judges and prosecutors

17. As noted in paragraph 11 of my report of 25 November 2005 (A/60/565) on 30 June 2005, letters were addressed on my behalf to all States asking them to suggest the names of individuals who might be nominated as judges of the Extraordinary Chambers, judges of the Pre-Trial Chamber and as Co-Investigating Judge and Co-Prosecutor in accordance with articles 3, 5, 6 and 7 of the Agreement. On 6 March 2006, I communicated to the Royal Government of Cambodia the

nominations of. Silvia Cartwright (New Zealand), Claudia Fenz (Austria), Chandra Nihal Jayasinghe (Sri Lanka), Martin Karopkin (United States of America), Agnieszka Klonowiecka-Milart (Poland), Jean-Marc Lavergne (France) and Motoo Noguchi (Japan) as international judges for the Extraordinary Chambers; Marcel Lemonde (France) as international Co-Investigating Judge; Paul Coffey (United States of America) and Robert Petit (Canada) as international Co-Prosecutors; and Rowan Downing (Australia) and Katinka Lahuis as international judges for the Pre-Trial Chamber.

18. On 4 May 2006, the Supreme Council of the Magistracy of Cambodia selected and appointed international and Cambodian judges, co-investigating judges and co-prosecutors for the Extraordinary Chambers. Among the international judges, Ms. Cartwright and Mr. Lavergne were appointed to the Trial Chamber, with Ms. Fenz acting as reserve, while Mr. Noguchi, Ms. Klonowiecka-Milart and Mr. Jayasinghe were appointed to the Supreme Court, with Mr. Karopkin as reserve. Ms. Lahuis and Mr. Downing were appointed to the Pre-Trial Chamber. Mr. Lemonde was appointed as the international Co-Investigating Judge and Mr. Petit as international Co-Prosecutor, with Mr. Coffey acting as reserve.

19. The Supreme Council of the Magistracy of Cambodia also appointed the following national judges, co-investigating judges and co-prosecutors from among serving Cambodian judges and prosecutors: Nil Non, Thou Mony and Ya Sokhan as Trial Chamber judges, with You Ottara serving as reserve; Kong Srim, Som Sereyvuth, Sin Rith and Ya Narin to the Supreme Court Chamber, with Mong Monichariya acting as reserve; Prak Kimsan, Ney Thol and Huot Vuthy to the Pre-Trial Chamber, with Pen Pichsaly acting as reserve; You Bunleng as Co-Investigating Judge, with Thong Ol acting as reserve; and Chea Leang as Co-Prosecutor, with Chuon Sun Leng acting as reserve.

20. On 3 July 2006, the above national and international judicial officers were sworn in during a ceremony held at the Royal Palace in Phnom Penh, which was presided over by the Minister of the Royal Palace of the Royal Government of Cambodia, and the Legal Counsel and Under-Secretary-General for Legal Affairs of the United Nations.

21. A Royal Decree was issued on 9 August 2007 appointing Co-Investigating Judge You Bunleng as President of the Cambodian Court of Appeal. The United Nations expressed its concern over the effect that implementation of the decree would have on the efficiency of the proceedings currently before the court. It also expressed its concern about the impact of the Royal Decree on the perceived independence of the Extraordinary Chambers. The United Nations has accordingly invited the Cambodian authorities to consider keeping Judge You Bunleng in his current function as Co-Investigative Judge of the Extraordinary Chambers in the Courts of Cambodia.

IV. Judicial organization

22. The judges and Co-Investigating Judge as well as the co-prosecutors, the head of the Defence Support Section and the Director and Deputy Director of the Office of Administration used the occasion of the swearing in of the aforementioned officers to hold a judicial strategic planning and development workshop from 3 to 7 July 2006.

23. At the workshop, the national and international judges concluded that the adoption of internal rules of procedure was required before the judicial process could commence. Two committees were formed, namely, the Rules and Procedures Committee and the Judicial Administration Committee. The former was tasked with drafting the internal rules of procedure and any other subsidiary rules, while the latter was tasked with liaising with the Office of Administration to ensure that judicial requirements were adequately addressed. The work of drafting and adopting the internal rules is addressed in section IX below.

V. Establishment of the Office of the Co-Prosecutors

24. Immediately following the workshop, the Office of the Co-Prosecutors became operational and prepared standard operating procedures to allow the Office to conduct preliminary investigations while the internal rules of procedure were being developed. The co-prosecutors collected over 450,000 pages of documentary evidence and deployed electronic systems to assist them in managing and analysing this evidence. The preliminary analysis of the evidence enabled the Office of the Co-Prosecutors to identify crime bases, events and suspects.

25. The co-prosecutors concluded that in order to ensure that prosecutions would proceed on a secure legal footing, it would not be possible to file an introductory submission with the co-investigating judges until after the adoption of the internal rules. While waiting for this to occur, they broadened their preliminary investigations to include additional facts and suspects, which may lead to additional submissions being filed.

26. On 18 July 2007, the co-prosecutors filed the first introductory submission with the Office of the Co-Investigating Judges. In a press release, they stated that preliminary investigations had identified and submitted for judicial investigation 25 distinct factual situations of murder, torture, forcible transfer, unlawful detention, forced labour, and religious, political and ethnic persecution as evidence of crimes committed in the execution of a common criminal plan. Those acts had resulted in the systematic and unlawful denial of the basic rights of the Cambodian population and the targeted persecution of specific groups.

27. The co-prosecutors also announced that their preliminary investigation had resulted in the identification of five suspects who bore primary responsibility for or who had committed, aided, abetted those crimes. The co-prosecutors provided the identities of the suspects to the co-investigating judges and requested that they proceed in accordance with the law. This may now include the arrest and detention of those suspects.

VI. Establishment of the Office of the Co-Investigating Judges

28. The co-investigating judges took up their functions in September 2006, when their Office became operational. As noted in paragraph 25 above, however, the co-prosecutors did not consider it appropriate for the co-investigating judges to begin judicial investigations until internal rules of procedure had been adopted. Both the national and international co-investigating judges were appointed members

of the Rules and Procedures Committee tasked with drafting such rules, and they were thus occupied mainly with this task during the reporting period.

29. The Office of the Co-Investigating Judges prepared itself for the commencement of judicial investigations by developing an investigation and analysis strategy and by providing training for both its national and international staff on substantive legal matters. Training on investigation techniques was also provided for national judicial police officers nominated by the Royal Government of Cambodia to assist the Extraordinary Chambers. With the filing of the introductory submission, the Office of the Co-Investigating Judges is now conducting its first judicial investigation.

VII. Establishment of the Defence Support Section

30. The head of the Defence Support Section took up his duties in October 2006. Soon thereafter, the national judges of the Extraordinary Chambers, the Director of the Office of Administration and the Royal Government of Cambodia queried the scope and staffing of the Section, and questioned its necessity, noting that it was the role of the Bar Association of the Kingdom of Cambodia to defend the interests of the accused before Cambodian courts, of which the Extraordinary Chambers was one.

31. Despite those issues, the Defence Support Section has been able to conduct legal research and analysis on a number of matters likely to be faced by the Extraordinary Chambers. The Section has also prepared a list of authorized counsel to appear before the Extraordinary Chambers and has completed the legal assistance scheme that will be used to reimburse lawyers representing indigent accused, as foreseen by article 17 (c) of the Agreement. The Section organized training courses on international criminal law with the Bar Association of the Kingdom of Cambodia and the International Bar Association with 90 Cambodian lawyers attending. The Section is also recruiting lawyers to apply for inclusion in the list and is conducting outreach activities that emphasize the importance of the rights of the accused in a fair trial.

VIII. Adoption of internal rules

32. Article 12.1 of the Agreement states that the Extraordinary Chambers shall apply Cambodian procedural law, except where there is a gap in such law or where there is an uncertainty or an inconsistency with international standards. In order to prevent an ad hoc approach to identifying gaps, uncertainties and inconsistencies with international standards and to provide clarity to applicable procedures, the judges decided to draft and adopt internal rules for the Extraordinary Chambers that would review Cambodian procedures and modify them where necessary.

33. The Rules and Procedures Committee, comprised of three national judges and two international judges, began drafting the internal rules of procedure in September 2006. A first draft was ready by mid-October 2006, and a plenary session to adopt the internal rules was held in November 2006, in Phnom Penh. The plenary failed to adopt the internal rules at that time, with the national and international judges

disagreeing, inter alia, over the role of the defence and the right of foreign lawyers to appear before the Extraordinary Chambers.

34. In order to move the process forward, the plenary created the Review Committee, comprised of the same judges as the Rules and Procedures Committee with the addition of two international and two national judges. The Review Committee was tasked with identifying the contentious issues in the draft internal rules and resolving them. Once a consensus was reached on a new draft of the internal rules, another plenary session could be called to adopt them.

35. The Review Committee held full meetings in January and March of 2007 in Phnom Penh, with those members of the Committee resident in Phnom Penh meeting on a weekly basis throughout that period. The international judges met in Bangkok for a preliminary meeting in February 2007 to discuss progress made. At the end of the March 2007 meeting, all contentious points on the internal rules had been resolved, except for the set of rules dealing with the defence.

36. Some agreement had been reached in respect of the rules dealing with the defence, but this was conditional upon the agreement of the Bar Association of the Kingdom of Cambodia to reduce the fees it was proposing to charge foreign lawyers who wished to appear before the Extraordinary Chambers. The international members of the Committee felt that the proposed fee amounted to an entry barrier for foreign lawyers, thereby denying the accused their full right to have counsel of choice in accordance with article 14 of the International Covenant of Civil and Political Rights.

37. On 27 April 2007, the Bar Association of the Kingdom of Cambodia agreed to lower its fees to a level deemed acceptable by the international members of the Review Committee, who noted that there was now agreement over the draft internal rules. On 12 June 2007, in a plenary session, the Extraordinary Chambers voted in favour of adopting the internal rules, which came into force 10 days later.

IX. Additional requirements

38. Notwithstanding the positive support and assistance of all partners, mobilization of further resources will be required during 2007. Delays in the adoption of the internal rules mean that the proposed timescale of three years for the Extraordinary Chambers has proven to be too optimistic and will need to be revised. It has also become evident that the original funding estimates for both the United Nations and the Government of Cambodia will not be sufficient to meet the court's requirements, as originally planned in 2004. In addition, funds were spent on unforeseen activities, notably convening the rules committee and the plenary sessions. A summary of expenditure as at 30 June 2007 is set out in the annex to the present report.

Revised timeline

39. It will be recalled that the original budget estimate for the Extraordinary Chambers anticipated that prosecution work would begin after a set-up and training period of three months. This was to be followed by an investigation phase beginning in month 6 of the first year and concluding in month 6 of the third year. The trial

phase of the court was to be held from month 6 to month 10 of the third year, with the appeal process scheduled to take place in the last two months of the same year.

40. The estimate, however, did not take into account the time actually taken to adopt the internal rules of the Extraordinary Chambers. Although the Office of the Co-Prosecutors began operations in July 2006, further progress according to the original timeline was delayed until June 2007 because of the need to create and adopt those rules. As a result, the investigation phase of the court did not begin until July 2007. At this stage, it is expected that the court would complete its work by 31 December 2009, barring any unforeseen circumstances which might result in an extended timeline.

Resource gaps

41. In addition to having an impact on the court's timeline, the internal rules also highlighted resource needs not considered in the original budget estimate. Such needs include, but are not limited to, a significant increase in the number of judicial meetings required each year, the establishment of a victims unit, the expanded role of the Pre-Trial chamber with judicial and administrative support requirements, transcription of all hearings, the presence of a reserve judge at all hearings and the expanded membership of the Rules and Procedures Committee.

42. Further funding gaps have also been identified in the original budget estimate which, if not addressed, will bring into question the ability of the court to carry out its mandate. Areas requiring further budgetary support include, but are not limited to, translation and interpretation; witnesses support; court management; and investigation; and legal research and analysis; case management; close protection; and public affairs.

43. Preliminary estimates indicate that a further $25 million will be needed to fund the United Nations share of the Extraordinary Chambers until 31 December 2009. The amount of $16.7 million represents staff and related costs, while the remaining $8.3 million represents operational costs, equipment, supplies and materials and programme support. A comprehensive review of all the additional requirements will be undertaken before the launch of a fund-raising campaign in the last quarter of 2007.

X. Conclusions

44. I am pleased with much of the progress achieved by the Extraordinary Chambers since the last report. The opening of the Offices of the Co-Prosecutors and Co-Investigating Judges, the establishment of the Defence Support Section, the commencement of investigative work, the adoption of the court's internal rules and the completion of the court's first introductory submission reflect the strong commitment of the Extraordinary Chambers to the judicial process.

45. However, it is recognized that the unique structure of the Extraordinary Chambers has led to challenges for both the administrative and judicial sides of the court. Significant shortfalls in staffing and the budget have been identified, and the original timeline for the court has proven unrealistic.

46. The Office of Administration of the Extraordinary Chambers intends to conduct a comprehensive review of all additional requirements and undertake a

fund-raising campaign on the basis of the review. It will be recalled that the United Nations established a trust fund to support the Extraordinary Chambers in fulfilling its important and historic mandate.

XI. Actions to be taken by the General Assembly

47. **The General Assembly may wish to take note of the present progress report and encourage the Secretary-General to continue providing essential substantive and logistical support to the Extraordinary Chambers.**

Annex

Update of expenditure of United Nations funds for the Khmer Rouge trials as at 30 June 2007

(In thousands of United States dollars)

	Total funding[a]	*Expenditure as at 30/6/07*[b]
Posts	24 007.0	8 139.5
Non-staff compensation	2 387.4	369.3
Other staff costs	1 454.7	364.6
Consultants and experts	550.5	157.1
Witness costs	111.1	0.1
Travel of staff	226.7	310.8
Contractual services	7 043.3	50.7
Training	246.7	208.1
General operating expenses	2 012.7	374.7
Supplies and materials	904.1	188.7
Furniture and equipment	4 104.8	2 582.3
Total	**43 049.0**	**12 745.8**

[a] For the period 29 April 2005 to 30 April 2008.
[b] For the period 29 April 2005 to 30 June 2007.